

**ENTERED**

March 18, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

VIETNAM LAND	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-14-957
	§	
JIMMY TRAN,	§	
	§	
Defendant,	§	
	§	
v.	§	
	§	
HOANG-YEN THI DANG,	§	
	§	
Third-Party Defendant.	§	

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

Pending before the court is the Magistrate Judge's Amended Memorandum and Recommendation, the objections of Plaintiff Vietnam Land and the response to the objections filed by Defendant Tran.

The court has conducted a de novo review of the pleadings and finds that the affidavits submitted by Vietnam Land fail to raise a triable issue of fact. The affidavit of Hoa Huu Pham, which was executed prior to the filing of this lawsuit, simply states that he has "full knowledge about all the facts stated in this lawsuit. I hereby state that all the facts stated in this lawsuit are true and correct."<sup>1</sup> This conclusory affidavit fails to rebut any factual averment made by Defendant Tran in support of his motion for

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<sup>1</sup> See Doc. 68-1, Ex. 1 to Pl.'s Objections to Am. Mem & Rec., Aff. of Hoa Huu Pham p. 1. The affidavit is dated May 23, 2011. A copy is attached to Plaintiff's amended complaint filed November 12, 2012. See Doc. 6-1, Aff. of Hoa Huu Pham p. 1.

summary judgment because it was executed three years before Tran's affidavit.<sup>2</sup> The additional affidavits of Hoa Huu Pham and Tam Van Dinh, also executed prior to the filing of this lawsuit, fail to raise any fact issue of fraud, breach of contract, breach of fiduciary duty, theft, conversion or embezzlement as they merely state that Tran signed checks on behalf of Vietnam Land, a fact that Tran does not contest. Finally, unverified, untranslated documents do not raise a triable issue of fact on any claim. Plaintiff has failed to rebut Tran's summary judgment evidence and summary judgment in his favor is appropriate.

The Amended Memorandum and Recommendation is **ADOPTED**.

**SIGNED** at Houston, Texas, this 18<sup>th</sup> day of March, 2016.

A handwritten signature in black ink, appearing to read "S. Lake", is written over a horizontal line.

SIM LAKE  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> See Doc. 74-1, Ex. 1 to Tran's Mot. for Summ. J., Aff. of Jimmy Tran executed May 4, 2015.